PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	**03-O-03022**
	)	
IONE YOUNG GRAY,	)	
	)	**OPINION ON REVIEW**
A Member of the State Bar.	)	**AND ORDER**
	)	

The State Bar's Office of Chief Trial Counsel (State Bar) sought review of a hearing judge's decision recommending, inter alia, that respondent Ione Y. Gray be actually suspended from practice for six months based on findings that by gross neglect, she engaged in moral turpitude by filing a real estate brokerage license renewal application which was deceptive. This suspension recommendation occurred as respondent was already serving a four-year and six-month actual suspension for crimes of moral turpitude followed by her unauthorized practice of law while under interim suspension.

The State Bar's appeal is based on its claims that respondent's actions were not merely grossly negligent but intentionally dishonest; and that, especially in light of her 2001 lengthy actual suspension, the degree of discipline here should be disbarment. After our independent review of the record in the original disciplinary proceeding, (rule 951.5, Cal. Rules of Court; *In re Morse*

(1995) 11 Cal.4th 184, 207), we agree with the State Bar, and we recommend that respondent be disbarred.

I. Statement of the Case.

A. Background relating to the present matter.

Respondent was admitted to practice law in 1977; and in 2001, she was actually suspended for four years and six months and until she shows her rehabilitation.[1] Although we shall discuss further her prior discipline, *post*, part of the basis for it is related to the present charges, and we set forth that related basis as follows. On January 31, 1997, respondent was convicted by jury verdict in federal court in the Central District of California, of crimes involving moral turpitude for a member of the State Bar, two counts of bank fraud (18 U.S.C. § 1014) and two counts of fraudulent use of Social Security numbers (42 U.S.C. § 408(a)(7)(B)).[2] Respondent's conviction showed that, in 1992 and 1993, in applying for a loan by a federally insured institution, she knowingly stated material facts falsely about her true identity, salary and Social Security number. Respondent's convictions became final in July 1999.

B. Facts and findings in the present matter.

The current charges allege that in September 1998, in filing her application to renew her California real estate brokerage license, respondent falsely stated, under penalty of perjury, that

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[1]This discipline was part of a five-year stayed suspension. Proof of respondent's rehabilitation, fitness to practice and legal learning was ordered pursuant to standard 1.4(c)(ii), Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct (standards). (See our decision in a companion case we file this date in *In the Matter of Gray*, State Bar Ct. No. 04-V-11603.)

[2]Respondent's criminal convictions were ineligible for summary disbarment (Bus. & Prof. Code, § 6102 subd. (c)), as they predated the form of the law which would have provided for that remedy upon finality of her conviction.

she had not been convicted of any federal crimes, when she had been convicted of moral turpitude crimes in federal court the previous year. She also allegedly back-dated her real estate license renewal application to three days before the jury reached its verdict convicting her.

The essential facts are not disputed and are established largely by stipulation and documentary evidence. The only major factual dispute surrounds whether respondent submitted any portion of her broker renewal application to the California Department of Real Estate (DRE) prior to January 31, 1997. As we shall discuss, *post*, the evidence shows clearly that respondent did not submit to DRE a renewal application in 1997, but on September 2, 1998.

The real estate broker renewal application respondent completed was a four-page printed form issued by DRE, augmented by required attachments. Immediately below the caption area on the first page, which asked for respondent's name, address, real estate license identification number and specified the fee for her application, was Question 3. This was posed in small block capital letters and asked: "Have you within the last 5 years been convicted of any violation of federal law? If yes, complete items . . . on page 3." Respondent stipulated that she checked the "No" box to answer Question 3. Page 3 of the application was devoted almost entirely to "Federal Conviction Details" and was required to be completed in case respondent had answered Question 3 in the affirmative. Page 3 defined federal convictions for purposes of the application much as the State Bar Act defines them for attorney disciplinary purposes. (Cf. Bus. & Prof. Code, §§ 6101-6102.) Page 3 also constituted a pre-printed example of how to complete this section of the application assuming, hypothetically, that an applicant had been convicted of a violation of title 18 United States Code section 1014, one of the very offenses of which respondent was convicted on January 31, 1997. Page 3 of the form respondent submitted to DRE

contained no entries except for respondent's DRE license identification and the record does not show who made that entry. Page 3 was submitted with respondent's application as it bore the same dated "Received" stamp of DRE, September 2, 1998, as each of the preceding pages and subsequent attachments submitted by respondent.

Respondent signed the body of the application on page 2 three times, under penalty of perjury. In the date of signature box, the typed date "1-25-97" was lined out by a row of dashes and to the right, a new date was typed "8-31-98." The record does not show who altered the dates.

Also attached to the application were a "continuing education course verification" form, signed by respondent on August 31, 1998, and a "public benefits statement" form, also signed by respondent on August 31, 1998. The "public benefits statement" provided citizenship verification of respondent and bore the legend that it was DRE form 205 "(New 3/98)". These attachments were also received by the DRE on September 2, 1998. Indeed, all of the evidence concerning receipt of respondent's brokerage renewal application shows that it was received by DRE on September 2, 1998, and no part of it was received before that time. This evidence is based not only on DRE's "Received" stamps affixed to respondent's renewal application, but on the testimony of a DRE supervisor, a DRE license division manager and DRE's schedule of fees in effect in both 1997 and 1998.

Respondent testified that she signed the DRE renewal form on January 25, 1997, that one of her employees, Hernandez, typed the application form and respondent signed it, copied it and signed one of the copies twice. She gave Hernandez a money order for the application fee and told him to mail it on January 25. She conceded that she may not have read the application

before she signed it. When the criminal trial jury returned a guilty verdict in her trial six days later, she assumed that her renewal application had already been mailed and her license renewed. However, respondent offered no documentation from DRE that it had received any application from her in January 1997 or on any date prior to September 2, 1998. Also, she did not inquire of Hernandez when he asked her in 1998 for added information about her citizenship and continuing real estate education courses and asked for an added fee for DRE in order to complete her application.

Another of respondent's employees, Jenkins, testified that he saw respondent sign the DRE application once at Hernandez's home on January 25, 1997, and Jenkins took the completed application to the post office and mailed it. He also testified that he saw respondent sign the application again on August 31, 1998 at her home with two different signatures.

Respondent also testified that she had graduated from Columbia University law school in 1971 and, upon graduation, concentrated in real estate investment trusts and related SEC filing matters with the large New York law firm of Paul, Weiss, Rifkind, Wharton and Garrison. In 1976, she became counsel to a California firm, the Cadwell Company, in which she focused on distressed or foreclosed properties repossessed by lenders. She obtained a California real estate brokerage license in 1976, a year before she was admitted to practice law in California. In about 1978, respondent started presenting real estate seminars. At the outset, she gave accredited DRE continuing education seminars. Later, and up to the time of her federal convictions, she presented seminars to the general public to teach how to acquire property with little cash down-payment and how to leverage financing to place buyers with limited cash flow into real estate.

Respondent testified that she was not detail-oriented and depended on staff to follow through on deadlines and details.

The hearing judge found that both respondent's testimony and that of Jenkins were in conflict and their recollection of facts untrustworthy. The hearing judge also found that respondent's unfettered delegation of authority to Hernandez was unreasonable and grossly negligent. It caused her application to be sent to DRE in 1998 with a material misrepresentation as to her record of federal conviction. The hearing judge concluded that respondent engaged in moral turpitude, proscribed by Business and Professions Code, section 6106, when she recklessly allowed her assistant to submit to DRE an application containing a material misrepresentation.

C. Evidence in mitigation and aggravation.

In mitigation, the hearing judge found that respondent's testimony of exercise of bad judgment in delegating the preparation and filing of her application warranted some credit.

In aggravation, the judge considered respondent's 2001 suspension for four years and six months actual and noted that it was not imposed solely for her conviction of crimes of moral turpitude, but also for added misconduct stipulated by respondent. That misconduct occurred between April and May of 1997 on six occasions when she engaged in acts of moral turpitude by holding herself out as entitled to practice law or by actually practicing law when she was under interim suspension because of her federal criminal convictions.

In recommending a six-month actual suspension in the present case, the hearing judge considered standards 1.6 and 2.3, but failed to consider standard 1.7(a), which operates when a member has a prior imposition of discipline. The judge deemed our decisions in *In the Matter of*

Wyrick (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83 and *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332 guiding, with *Wyrick* being more persuasive.

The State Bar's appeal followed.

II. Discussion.

At the outset, we address a procedural issue raised by respondent. She claims that the charges in the present matter were known by the State Bar by 2001, at the time it litigated her prior disciplinary proceeding. Respondent's purpose in making this argument is unclear, although she suggests that maintaining the current proceeding justifies its dismissal.

Respondent offers no record evidence to support her claim and the basic evidence refutes it. It is clear from even a cursory review of the records in the prior and present proceedings that respondent's prior discipline was concluded by the Supreme Court in August 2001, yet not until December 2002 did DRE file an accusation to revoke her brokerage license based on her attorney discipline. We see no evidence that the State Bar had the ability to combine the charges in the present matter with those of the prior or that the State Bar acted unreasonably in pursuing the present matter separately. Indeed, the record shows that the State Bar did agree to combine respondent's 1997 conviction of crime proceeding with original proceedings filed in our court in 2000 arising out of charges of unauthorized practice of law.[3] Respondent and the State Bar

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[3]Historically, attorney disciplinary proceedings arising from convictions of crime (Bus. & Prof. Code, §§ 6101-6102) have been conducted differently from original disciplinary proceedings arising from a complaint of another. (*Id.*, §§ 6075-6089.) This difference recognizes the specific statutory direction over criminal conviction matters acceded to by the Supreme Court and that the processing of conviction proceedings has been initiated and supervised directly by the Supreme Court until late 1991; and then, on delegation by the Supreme Court, initiated and supervised directly by us. (E.g., Cal. Rules of Court, rule 951(a); *compare*, e.g., *In re Wright* (1973) 10 Cal.3d 374, 376-377.) Applicable procedural rules have long allowed for the consolidation of conviction and original proceedings so long as no substantial

entered into a single comprehensive stipulation about both of those formerly separate proceedings. We see no error established by respondent in not combining this current proceeding with the prior matter.

A. Culpability

The State Bar urges that respondent's deceit was intentional and not merely grossly negligent. We agree with the State Bar, but we need not decide whether respondent deliberately backdated her brokerage application to a date in January 1997 prior to the adverse jury verdict since it seems beyond dispute that respondent did not file with DRE any part of her brokerage renewal application until September 2, 1998. When she did file the application, it was clearly deceptive as to her lack of a federal conviction. In our view, the evidence leads strongly to the conclusion that respondent's conduct went beyond mere gross neglect, and crossed over into deliberate acts of moral turpitude. We reach this conclusion exercising our independent judgment on the evidence but fully consistent with our duty to accord great weight to the hearing judge's assessment of respondent's credibility as a witness. (Rules. Proc. of State Bar, rule 305(a).)

As we noted, the hearing judge found respondent's testimony unreliable. We agree with that determination and when we apply that credibility assessment to all the evidence in toto, we find that a number of factors cause us to conclude that the evidence shows deliberate deceit by respondent, wrapped in an unpersuasive gossamer of "deniability." It is significant that, on

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prejudice occurs and if consolidation will not cause undue delay in adjudicating individual matters. (Rules Proc. of State Bar, rule 108.)

review, respondent's only real reference to the facts is her most cursory summary of her own testimony unaccompanied by any record reference.

Respondent testified that Hernandez prepared the application and she only copied it and signed it. Yet, at odds with her testimony, she stipulated below that *she* checked the box on the DRE form that she had no federal conviction.[4] Given her advanced academic and practice background, and that she conducted extensive real estate seminars, including in earlier times as an accredited DRE continuing education provider, she must have known about or noticed DRE's extensive explanation of federal convictions subject to disclosure on page three of the application, including prominent use of a hypothetical, the very offense she was on trial for at the time she testified that she completed this part of her application.

Regardless of when respondent signed page two of the application, she did not sign required portions of the DRE application form until August 31, 1998. Thus, even if she had sought to "isolate" to a few days before January 31, 1997, her response to DRE's question about federal convictions, her intentional presentation to DRE of the complete application in September 1998 was necessarily dishonest, since the application was a unified submission and not a compilation of unrelated pages. Moreover, even if she believed that she had filed a complete application with DRE by January 1997, she admittedly did not inquire into whether DRE renewed her license after her asserted January 1997 submission, or even whether DRE

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[4]At oral argument before us, respondent's counsel asserted that respondent's written stipulation of facts was "trumped" by her later testimony that she had only signed the application. We reject summarily this assertion. At best, it conflicts squarely with well-established law which holds parties to the factual recitals in stipulations they enter into. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 470-471; *Inniss v. State Bar* (1978) 20 Cal.3d 552, 555.)

received it. Nor did respondent question her employees when one of them asked her in 1998 for additional fees to send to DRE to support her renewal application.

As DRE senior staff testified, it never received even a partial application from respondent for this renewal prior to September 1998. Moreover, respondent's testimony surrounding her signature on the applications and the timing of those signatures conflicted with that of her witness, Jenkins.[5]

If respondent feared that she was in jeopardy of losing her law license as a result of her federal convictions of crimes of moral turpitude, her brokerage license was, contrary to her testimony, most important to her, particularly since her real estate seminar activity was a major aspect of her work. Indeed, once her law license was interimly suspended following criminal conviction, on this record, her brokerage license was her only remaining professional license. Since respondent did not file her DRE brokerage renewal application until after January 31, 1997, her method of attempting to create the impression that at least the portion of the DRE application concerning federal criminal convictions was attested to as of a few days before the conviction succeeded in the short-term, as she was able to renew her brokerage license based on deceit and to keep it until 2003.

It is unnecessary to dwell at length on the seriousness of an attorney's deliberate act of deceit. The Supreme Court has often condemned the conduct, characterizing it as perhaps

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[5]We are inclined to give less weight to the hearing judge's credibility assessment of Jenkins in view of the hearing judge's primary concern that Jenkins's testimony was not trustworthy because it conflicted with that of respondent. That conflict may have made Jenkins's testimony more, rather than less, reliable. In any event, without more, it did not make Jenkins's testimony inherently unreliable.

constituting an even more serious offense than misappropriation of trust funds (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128).

Even if we were to agree, arguendo, with the hearing judge that all that was shown here was respondent's gross neglect, that alone would warrant a conclusion that respondent engaged in an act of moral turpitude as charged in these proceedings. (*In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 808; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 191.)

B. Degree of discipline.

The standards are helpful in guiding the degree of discipline to recommend and we start with them. (E.g., *In re Brown* (1995) 12 Cal.4th 205, 220.) We agree with the hearing judge that the most apt substantive standard is 2.3 which provides for actual suspension or disbarment for acts of the type found here. The choice of sanction depends on the extent to which the victim is harmed or misled, the magnitude of the misconduct and its relationship to the attorney's acts within the practice of law. Respondent was able to retain her brokerage license for over four years after she submitted her dishonest application. Moreover, honesty and careful completion of licensing applications are inherently related to fitness to practice law. (Cf. *In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 34 [application for reinstatement].) Thus, under standard 2.3, actual suspension could clearly be in order if, for example, respondent had no prior discipline and presented significant mitigation. Indeed, depending on the circumstances, reproval or suspension has been imposed in past cases of an attorney's single act of deceit. (E.g., *DiSabatino v. State Bar* (1980) 27 Cal.3d 159, *Mushrush v. State Bar* (1976) 17 Cal.3d 487; *In the Matter of Mitchell, supra,* 1 Cal. State Bar Ct. Rptr. 332.)

However, respondent's recent prior discipline was a most serious aggravating factor. It not only resulted in a length of suspension about as close to disbarment as is ordinarily imposed, it was grounded on more than her convictions of moral turpitude crimes. As the record reveals, while under interim suspension for these crimes, respondent practiced law or held herself out as entitled to practice on six occasions.

This very serious prior record leads us to consider an additional standard which was not cited by the hearing judge in his decision: standard 1.7(a). In cases where the attorney has been disciplined once before, it provides for a greater degree of discipline to be imposed in the second proceeding than in the first, "unless the prior discipline was so remote in time to the current proceeding" and the prior offense was so minimally severe that "imposing greater discipline ... would be manifestly unjust." Unquestionably, respondent's prior discipline was recent and most serious. If we follow standard 1.7(a), we should recommend greater than the four-year and six-month actual suspension recommended previously.

The State Bar cites to us the Supreme Court's decision in *In re Silverton* (2005) 36 Cal.4th 81, as authority supporting its urging of disbarment. That case is contextually different from the present one in that Silverton had been disbarred, then reinstated, when he committed further misconduct. To the extent that *Silverton* is cited for its discussion of standard 1.7(a), it offers guidance here but other cases decided before *Silverton* by the Supreme Court and by us also guide us as to the weight to accord a record of serious prior discipline as a relevant factor in assessing the appropriate discipline in the case before us. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507; *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1087-1088; e.g., *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380-381.)

In addition to the guidance of standard 1.7(a) here, we also look at all relevant factors when recommending discipline and when considering the effect of prior discipline on the recommendation in the current proceeding. (E.g., *Gary v. State Bar* (1988) 44 Cal.3d 820, 828-829.) We are presented with a record showing respondent's lengthy suspension in 2001 for moral turpitude felonies, aggravated by her circumvention of the effect of her interim suspension for those crimes. Her present offense, while perhaps narrower than what led to her prior discipline, shows an added and deceptive attempt to avoid the consequences of her earlier criminal conviction and also involving a professional licensing context. The preponderance of aggravating circumstances over mitigating ones, together with the seriousness of the offense in context of her recent prior record, demonstrate that respondent should undergo a formal reinstatement proceeding before being entrusted again with the high duties of a member of the State Bar. (Rules Proc. of State Bar, rule 662.)

III. Formal Recommendation.

For the foregoing reasons, we recommend that respondent, Ione Y. Gray, be disbarred from the practice of law in this state and that her name be stricken from the roll of attorneys in this state.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code, section 6086.10, and are enforceable both as provided in section 6140.7 of that code and as a money judgment.

As respondent has remained on suspension since April 1997, we do not order her compliance with the provisions of rule 955, California Rules of Court.

ORDER OF INACTIVE ENROLLMENT

Pursuant to the provisions of Business and Professions Code section 6007, subdivision (c)(4) and Rules of Procedure of the State Bar, rule 220(c), respondent is ordered enrolled inactive upon personal service of this opinion or three days after service by mail, whichever is earlier.

STOVITZ, P. J.

We concur:

WATAI, J.

EPSTEIN, J.

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 18, 2006, I deposited a true copy of the following document(s):

OPINION ON REVIEW AND ORDER FILED OCTOBER 18, 2006

in a sealed envelope for collection and mailing on that date as follows:

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWARD O LEAR
CENTURY LAW GROUP
5200 W CENTURY BLVD #940
LOS ANGELES, CA 90045

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ALAN B. GORDON, Enforcement, Los Angeles
MICHAEL J. GLASS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 18, 2006**.

Rosalie Ruiz

Rosalie Ruiz
Case Administrator
State Bar Court